IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1547 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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SHRI AMANKHAN @ AMAN METAR BISMILLAHKHAN PATHAN - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 29/12/2005

ORAL JUDGMENT

1.Shri Amankhan @ Aman Metar Bismillahkhan Pathan, petitioner has filed this petition under Article 226 of

the Constitution of India with a prayer that this Court may be pleased to issue writ of mandamus for quashing and setting aside the impugned order dated 22/9/2005 passed by the Deputy Commissioner of Police, respondent no.2 under Section 56(b) of the Bombay Police Act, 1951, externing the petitioner for a period of two years which has been confirmed by the Deputy Secretary, Home Department, New Sachivalaya, Gandhinagar, respondent no.1 vide its order dated 26/10/2005 as being illegal, invalid, null and void, suffers from total non-application of mind, without authority of law, against the principles of natural justice and violative of Articles 14, 19 and 21 of the Constitution of India. Petition has been filed on 14/11/2005.

2. This Court has issued Rule on 18/11/2005. Rule has been made returnable on 8/12/2005. Therefore, the has come up for final hearing to this Court today.

3. Mr.H.R.Prajaptai, learned advocate for the petitioner has stated that though there are several grounds, he desires to raise only one ground in this behalf. He has stated that show cause notice was issued by the authority on 13/1/2005. The petitioner has filed his

reply on 27/1/2005, 28/2/2005 and 6/4/2005 and the authority has passed the order of externment in September 2005. Though last hearing was on April 2005, order of externment has been passed on 22/9/2005. So, there are about five months delay in passing the order. The authority has not explained the delay. The authority has not filed any reply explaining the delay. For the same, the learned counsel for the petitioner has relied upon the judgment of this Court (Coram:K.M.Mehta, J.) in the case of Dilaji Bharthaji Vihol v. Deputy Commissioner of Police and another in Special Criminal Application No.1451 of 2005 decided on 1/12/2005. In that case this Court has considered the provisions of Bombay Police Act, 1951 particularly Section 56 and 59, Division Bench judgment of this Court in the case of Chothamal Sagansingh Rajput v. State of Gujarat and others, reported in 1989 (30) (1) GLR 63 and another Division Bench judgment in the case of Santosh Ramprasad Sharma v. Deputy Commissioner of Police, Crime Branch, Ahmedabad City, Ahmedabad and the State of Gujarat, reported in 1992 Cr.L.R. (Guj.) 360. The learned counsel has also relied upon one unreported judgment of Division Bench of this Court in Special Criminal Application No.1295 of 1994 decided on

24/6/1995 in the case of Vasantiben Mukeshbhai Rander v. State of Gujarat and judgment of this Court in the case of Sitaben M. Thakore v. Deputy Commissioner of Police, reported in 1997 Cr.Lr. (Guj.) 139 GLH. In that matter, this Court has also considered the principles of natural justice.

4. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. The learned APP has argued that the authority has passed order after complying with the matter. In that context also, this Court has relied upon one latest judgment in the case of Canara Bank v. Debasis Das, reported in (2003) 4 SCC 557, judgment in the case of Kanhaiyalal and others v. Anupkumar and others, reported in (2003) 1 SCC 430, where the Hon'ble Supreme Court has considered the question of delay in civil proceedings. Judgment of the Division Bench of this Court (Coram:R.S.GARG and K.M.MEHTA, J.J.) in the case of Ramkishan Guru Raghunathdasji v. Ramavtar Bansraj Singh decided on 28/9/2005 has also placed reliance on the aforesaid judgment in the case of Kanhaiyalal (supra) and quashed the order of externment only on the ground of delay.

5.In the result, petition is allowed. Order of externment dated 22/9/2005 is quashed and set aside and order dated 26/10/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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